IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 23RD JULY 2007 / 1ST SRAVANA 1929

Bail Appl..No. 4446 of 2007()

CRIME NO. 461/07 OF KASARAGOD POLICE STATION

PETITIONER - ACCUSED

ABDUL JALEEL, S/O.
AZAD NAGAR, KASARAGOD.

BY ADV. SRI.K.K.MOHAMED RAVUF

RESPONDENTS: COMPLAINANT

THE STATE OF KERALA, REPRESENTED BY
STATION HOUSE OFFICER, KASARAGOD POLICE
STATION, THROUGH PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 23/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 4446 of 2007

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Dated this the 23rd day of July, 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegation of having committed the offence punishable under Section 377 I.P.C. against a school boy, aged about 15 years. The crux of the allegations is that the petitioner had influenced the said boy by giving him articles, including a mobile phone. It is alleged that at the bus stand shelter the petitioner had persuaded the boy to have oral sex with him. A neighbour, who accidentally come to the bus stand allegedly suspected foul play and the boy was questioned. It was at that stage that the allegations were revealed to the said neighbour. The boy was taken to his parents and later the complaint was lodged before the police. Crime has been registered. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the allegations are so improbable and artificial that no person can rely on those allegations and the petitioner may not be compelled to suffer the undeserved trauma of arrest and incarceration. It is prayed that

directions under Section 438 Cr.P.C. may be issued in favour of the petitioner.

3. The learned Prosecutor opposes the application. He submits that the mere fact that the allegations, according to the petitioner, are improbable is not sufficient to justify the invocation of the powers under Section 438 Cr.P.C. While considering the alleged improbability it may be taken into consideration that it is unlikely that any person with any oblique motive would have raised such allegedly improbable allegations against the petitioner also. In the totality of circumstances which are revealed in the F.I. statement and the investigation thereafter, there is absolutely nothing to doubt or suspect the words of the boy concerned, who was obliged to give the version to the neighbour who had come across the act and confronted the boy with the circumstances. I am of the opinion that it would be puerile for a court to throw overboard the case merely because of the alleged improbability. Suffice it to say that I am not persuaded that this is a fit case where the extra ordinary equitable discretion under Section 438 Cr.P.C. can or ought to be invoked in favour of the petitioner.

4. The powers under Section 438 Cr.P.C. are to be invoked only sparingly and in exceptional cases, that too, only in aid of justice. When

the power to arrest, which the State and its officials have, are about to be misused with oblique motive, such jurisdiction can be invoked. In the facts and circumstances of this case, there is no allegation of malafides even against the boy or his parents or the police officials. There is no case as to why they should cook up a false case against the petitioner and resort to the power of arrest against him. This I am satisfied is a fit case where the petitioner must resort to the ordinary and regular procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

4. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the Investigating Officer or the learned Magistrate and applies for regular bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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